

United States District Court
District Of Maine

UNITED STATES OF AMERICA FOR
THE USE AND BENEFIT OF LOCAL
1253, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, By and Through Chuck
Fraser in His Representative Capacity
as Business Manager; NATIONAL
ELECTRICAL CONTRACTORS
ASSOCIATION/INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS FAMILY MEDICAL CARE
TRUST FUND, By and Through Its
Board of Trustees; NATIONAL
ELECTRICAL BENEFIT FUND, By
and Through Its Board of Trustees;
I.B.E.W. LOCAL 1253 PENSION
TRUST FUND, By and Through Its
Board of Trustees; AUGUSTA
ELECTRICAL JOINT
APPRENTICESHIP AND TRAINING
COMMITTEE TRUST FUND, By and
Through Its Board of Trustees; and
MAINE ELECTRICAL WORKERS
SUPPORT FUND,

Plaintiffs,

v.

WILLIAMS BUILDING COMPANY,
INC.; CUBE ELECTRICAL
CONSTRUCTION, INC.; and
WESTERN SURETY COMPANY,

Defendants.

Docket No.:

Complaint And Demand For Jury Trial

Plaintiff the United States of America, for the use and benefit of Local 1253 of the International Brotherhood of Electrical Workers (“Local 1253” or “the Union”), by and through Chuck Fraser in his representative capacity as Business Manager of Local 1253; National Electrical Contractors Association/International Brotherhood of Electrical Workers Family Medical Care Trust Fund (“Family Medical Trust”), by and through its board of trustees; the National Electrical Benefit Fund (“Benefits Trust”), by and through its board of trustees; the I.B.E.W. Local 1253 Pension Trust Fund (“Retirement Trust”), by and through its board of trustees; the Augusta Electrical Joint Apprenticeship and Training Committee Trust Fund (“Training Trust”), by and through its board of trustees; and the Maine Electrical Workers Support Fund (“Support Fund”), bring this action against Defendants Williams Building Company, Inc., Cube Electrical Construction, Inc., and Western Surety Company, and state as follows:

Parties

1. Plaintiff Local 1253 is a voluntary, unincorporated association existing pursuant to the laws of the State of Maine and maintains its principal place of business at 176 Main Street, Fairfield, Maine 04937. Local 1253 is an “employee organization” within the meaning of § 3(4) of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29

U.S.C. § 1002(4), and is a labor organization within the meaning of Section 2(5) of the Labor-Management Relations Act of 1947 (“LMRA”), as amended, 29 U.S.C. §152(5). Chuck Fraser (“Fraser”) is the Business Manager and duly authorized representative of the Local 1253 and is authorized to bring this cause of action on behalf of the Union in his representative capacity.

2. Plaintiff Family Medical Trust is a multiemployer employee benefit plan within the meaning of Sections 3(3), 3(37), 502, and 515 of ERISA, 29 U.S.C. §§ 1002(3), 1002(37), 1132, and 1145. Plaintiff Family Medical Trust maintains its principal place of business at 410 Chickamauga Avenue, Suite 301, Rossville, Georgia 30741.

3. Plaintiff Benefits Trust is a multiemployer employee benefit plan within the meaning of Sections 3(3), 3(37), 502, and 515 of ERISA, 29 U.S.C. §§ 1002(3), 1002(37), 1132, and 1145. Plaintiff Benefits Trust maintains its principal place of business at 2400 Research Boulevard, Suite 500, Rockville, Maryland 20850.

4. Plaintiff Retirement Trust is a multiemployer employee benefit plan within the meaning of Sections 3(3), 3(37), 502, and 515 of ERISA, 29 U.S.C. §§ 1002(3), 1002(37), 1132, and 1145. Plaintiff Retirement Trust is administered at 176 Main Street, Fairfield, Maine 04937.

5. Plaintiff Training Trust is a multiemployer employee benefit plan within the meaning of Sections 3(3), 3(37), 502, and 515 of ERISA, 29 U.S.C.

§§ 1002(3), 1002(37), 1132, and 1145. Plaintiff Training Trust is administered at 176 Main Street, Fairfield, Maine 04937.

6. Plaintiff Support Fund is a nonprofit corporation existing pursuant to the laws of the State of Maine. Plaintiff Support Fund is administered at 176 Main Street, Fairfield, Maine 04937.

7. Defendant Williams Building Company, Inc. is a Massachusetts corporation existing under Massachusetts state laws with an office located at 259A North Street, Suite 2, Hyannis, Massachusetts 02601.

8. Defendant Cube Electrical Construction, Inc., is a Massachusetts corporation existing under Massachusetts state laws with an office located at 10 Regis Road, Andover, Massachusetts 01810.

9. Defendant Western Surety Company is a South Dakota corporation organized and existing under the laws of South Dakota, with its principal office located at 101 South Reid Street, Sioux Falls, South Dakota 57103.

Jury Trial Demand

10. Under Fed. R. Civ. P. 38(b), Plaintiffs demand trial by jury on all issues triable to a jury.

Jurisdiction and Venue

11. Jurisdiction of this case is based upon 28 U.S.C. § 1331. This action arises pursuant to 40 U.S.C. § 3131, *et seq.* (the “Miller Act”).

12. Venue is proper in the United States District Court for the District of Maine pursuant to 40 U.S.C. § 3133(b)(3)(B) because the work in question took place in Augusta, Maine, within the territorial jurisdiction of this Court.

Factual Allegations

13. Upon information and belief, on or about August 24, 2015, Defendant Williams Building Company entered into a prime contract with the Department of Veterans Affairs, Contract No. VA24115J1397, to replace the roof and electrical switchgear at the Togus VA Hospital located outside Augusta, Maine. The value of Contract No. VA24115J1397 was \$581,730

14. Upon information and belief, on or about May 19, 2017, Defendant Williams Building Company entered into a prime contract with the Department of Veterans Affairs, Contract No. VA24117J1063, to complete a renovation of the SCI and blood draw at the Togus VA Hospital. The value of Contract No. VA24117J1063 was \$1,612,940.

15. Upon information and belief, subsequent to the award of the prime contracts, Defendant Williams Building Company subcontracted the portion of the work for the projects that related to electrical installation to Defendant Cube Electric.

16. Because the value of Contract No. VA24115J1397 was more than \$100,000, Williams Building Company was required by 40 U.S.C. § 3131(b)(2) to obtain a payment bond to cover the value of the work.

17. Similarly, related to the work under Contract No. VA24117J1063, Defendant Williams Building Company obtained a Payment Bond, No. 63252322, with Defendant Cube Electrical Construction as the principal and Defendant Western Surety Company as the surety, as required by 40 U.S.C. § 3131(b)(2). *See* Exhibit 1. The stated liability limit of the bond is \$236,000.

18. Defendant Cube Electrical Construction is signatory to an Inside Construction Agreement (the “Agreement”) with Plaintiff Local 1253. *See* Exhibits 2–3. The Agreement requires Defendant Cube Electrical Construction to file payroll reports concerning the hours worked by employees pursuant to the Agreement and to pay contributions at specified rates to Local 1253 and to the Family and Medical Trust, Benefits Trust, Retirement Trust, Training Trust, and Support Fund, based on either the number of hours worked by each employee covered by the Agreement or on a percentage of the total payroll.

19. The Agreement also requires Defendant Cube Electrical Construction to remit dues to Local 1253, along with other assessments and contributions.

20. In the event of a delinquency, the Agreement and Trust Agreements incorporated therein provide that Defendant Cube Electrical Construction is liable for interest on unpaid balances. *See* Exhibits 2, 4–7.

21. In the event of litigation to collect a delinquency, the Agreement and incorporated Trust Agreements also provide that Defendant Cube Electrical Construction is liable for accounting fees, audit costs, expert fees, attorneys' fees, and the costs of litigation.

22. Defendant Cube Electrical Construction performed work in connection with the projects at the Togus VA Hospital for which it should have filed reports of hours worked by its employees and paid contributions to Local 1253 and to the Family and Medical Trust, Benefits Trust, Retirement Trust, Training Trust, and Support Fund, but failed to do so.

23. Members of Local 1253 worked continuously for Defendant Cube Electrical Construction at the Togus VA Hospital from September 2015 through September 2018. For the period of March 2016 through September 2018, Defendant Cube Electrical Construction failed to pay at least \$97,881.83 in contributions to Local 1253 and to the Family and Medical Trust, Benefits Trust, Retirement Trust, Training Trust, and Support Fund. Defendant Cube Electrical Construction also failed to submit dues owed to Local 1253 totaling \$9,455.07. *See* Exhibit 8.

24. Defendants are also liable, jointly and severally, for continually accruing interest as provided in Cube Electrical Construction's Agreement with Local Union No. 1253 and the Trust Agreements incorporated therein. This amount currently totals at least \$32,284.59, with additional interest accruing monthly.

25. Defendants are liable, jointly and severally, for liquidated damages as provided in Cube Electrical Construction's Agreement with Local 1253 and the Trust Agreements incorporated therein in the amount of \$5,683.44 as of the filing of this action. *See* Exhibits 4–5.

26. Although the foregoing amount is stated with substantial accuracy, the full amount of Cube Electrical Construction's delinquency may not be known without an audit of its records and Defendant Williams Building Company's records related to the Project.

27. Defendants are liable, jointly and severally, for Plaintiffs' attorneys' fees associated with bringing this action, as provided in Cube Electrical Construction's Agreement with Local 1253 and the Trust Agreements incorporated therein.

28. On or about December 18, 2018, Local 1253 and the Family and Medical Trust, Benefits Trust, Retirement Trust, Training Trust, and Support Fund timely provided Williams Building Company with notice of their claim for payment by Certified Mail, Return Receipt Requested. Said

notice included a demand for payment of all amounts due, stated with substantial accuracy. Subsequent to their initial notice, Local and the Family and Medical Trust, Benefits Trust, Retirement Trust, Training Trust, and Support Fund updated their claim amount and continued to demand payment.

29. This action is being instituted more than ninety days after Plaintiffs' members furnished labor and within one year of Local 1253's last work for Cube Electrical Construction at the Togus VA Hospital.

30. The last date of labor for which the claim is made was furnished on September 28, 2018.

31. Pursuant to 40 U.S.C. § 3133(b)(3)(A), this action is being instituted and presented against Defendants Williams Building Company, Cube Electrical Construction, and Western Surety Company in the name of the United States of America for all sums justly due Local 1253 and the Family and Medical Trust, Benefits Trust, Retirement Trust, Training Trust, and Support Fund at the time of the filing of this action, or that may become due Local 1253 and the Family and Medical Trust, Benefits Trust, Retirement Trust, Training Trust, and Support Fund during the pendency of this action.

32. Pursuant to the Agreement, and in accordance with the subcontract, the Bond and applicable State and federal law, Defendants

Williams Building Company, Cube Electrical Construction, and Western Surety Company are each jointly and severally obligated to Local 1253 and to the Family and Medical Trust, Benefits Trust, Retirement Trust, Training Trust, and Support Fund in the amount of at least \$145,304.93, plus presently accruing interest and attorneys' fees and costs.

Wherefore, Plaintiffs requests relief against Defendants as follows:

- (a) Enter Judgment for them and against Williams Building Company, Cube Electrical Construction, and Western Surety Company, jointly and severally;
- (b) Enter Judgment requiring Defendants Williams Building Company and Cube Electrical Construction to submit their books and records to an audit, in order to determine the full amount of contributions owed;
- (c) Enter Judgment for Plaintiffs and against Williams Building Company, Cube Electrical Construction, and Western Surety Company, jointly and severally in the amount of at least \$145,304.93 plus presently accruing interest, or any different or additional amounts determined to be due and owing by audit;
- (d) Allow Plaintiffs a trial by jury on all issues so triable;
- (e) Enter Judgment awarding Plaintiffs accounting fees, audit costs, expert fees, attorneys' fees, and the costs of litigation associated with bringing this action; and

(f) Enter Orders for such further relief as the Court deems proper.

Respectfully submitted,

Date: September 19, 2019

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